

Oil Spill Advisory Council Minutes

November 30, 2005
Department of Ecology, Rm. 1S16N17
300 Desmond Drive, Lacey, WA

Members Present: Chairman Mike Cooper, Brett Bishop, Stuart Downer, Phillip Bannan, John Schumacher, Jeff Shaw, Phil Winberry, Gerald Joyce, Mike Doherty, Michael Moore, Lee Roussel, Kathy Fletcher, Kevin Ranker, Jim Davis, Pam Bissonnette, and Nick Jones

Staff Present: Jacqui Brown Miller and Corey Nunlist

Members Absent: David Sones

Chairman Cooper called the meeting to order at 9:00 a.m.

Draft Minutes (October 21 Meeting)

Edits to the draft minutes were noted. Captain Mike Moore (Moore) corrected a statement from his list of stakeholder priorities. Kathy Fletcher (Fletcher) suggested that only corrections be made to minutes, not clarifications or comments. Moore agreed. The draft minutes will be corrected and posted on the website.

Meeting Locations

Locations for six meetings in 2006 were suggested as Olympia, Seattle, Friday Harbor, Neah Bay, Longview, and Bellingham. Probable changes include: the Neah Bay meeting moved to Port Angeles; the Longview meeting moved to Vancouver; the Friday Harbor meeting moved to Lopez; the Seattle meeting moved to Everett. These changes were suggested to save money and to situate meetings with better opportunities for viewing stakeholder operations.

Mission Statement

Modifications were suggested to the proposed mission statement (attached). Nick Jones (Jones) wanted to add “food production” to the first sentence. Gerald Joyce (Joyce) wanted to see the mission statement reflect the council’s charge to protect all navigable waters of Washington, not just marine waters. Other suggestions included combining the first and third sentences, dropping the third sentence entirely, and shortening the second sentence. Staff will take the suggestions into consideration and send out a revised mission statement to council members for approval.

Tracking of Federal Legislation – The Magnuson Amendment

Jacqui Brown Miller (Brown Miller) briefed the council on the Magnuson Amendment (see attached document titled ‘Magnuson Amendment and Proposed Repeal’) and past and present legal issues surrounding it. The Magnuson Amendment (MA) was introduced in Congress in 1977 to restrict the refining capacity of Washington

oil facilities to the amount consumed by the state of Washington. Limited tanker traffic in Puget Sound, and therefore less risk of large spills, is a direct result of the MA. Recently, Sen. Ted Stevens (R-AK) has introduced legislation to repeal the MA.

Chairman Cooper invited discussion on the subject.

Fletcher commented that a possible repeal of the MA underscores the work of the council to prevent spills. Prevention is very important, and part of prevention is limiting threats, which directly relates to the MA.

Moore remarked that a picture of oil traffic is complex, and that the council needs a better understanding of how that picture will change.

Joyce suggested questioning the council's Assistant Attorney General as to whether a repeal of the MA would mean no more legal standing for the state. He also suggested looking at both product coming in and product going out to better understand how a repeal of the MA would affect tanker traffic in Puget Sound.

Jeff Shaw (Shaw) said that the oil industry's goal is to increase production capacity nationally in order to stabilize supply and demand and reduce imports.

A related issue is whether BP may use a newly constructed dock at its Cherry Point facility. Chairman Cooper invited Bill Kidd (Kidd), representing BP, to speak before and educate the council concerning this matter. A second wing of the dock was part of an original facility plan in 1971, but construction of the wing did not start until 2000. BP was sued before the wing was fully completed. Federal District Court ruled in favor of BP, but the decision was overturned by the 9th Circuit Court which commented that the Army Corps of Engineers erred in not requiring an environmental impact statement before issuing the building permit, that the case would be remanded to the District Court, and that the Corps of Engineers should look at the issue in light of the Magnusson Amendment.

Kidd stated that BP's goal is not to alter size restrictions on tankers in Puget Sound, nor to rollback environmental regulations, but rather to meet an ever-increasing demand for oil. He said the west coast faces a deficit of 150,000 barrels of oil a day, and that demand on the west coast is projected to increase 2% yearly.

The council was then invited to ask Kidd questions.

Moore asked if an analysis has been done of west coast imports/exports and coastal movements of oil. Kidd replied that the vast majority of oil movement is ship borne, that imports arrive on the west coast from all over the world, and that BP faces increasing competition from all of those suppliers. Moore followed up by saying the council could benefit from understanding other factors affecting ship transits, such as air emission controls and fuel quality.

Fletcher asked for clarification of whether or not BP's second wing would increase crude oil handling capacity. Kidd answered that it's a question of defining 'crude handling capacity' as of a certain date. Fletcher followed up by asking about product coming in and going out, noting that a report on the matter would be useful. Chairman Cooper added that the council would be looking at the matter in more detail as relevant legislation moves through Congress.

Mike Doherty (Doherty) asked about a general supply picture of crude oil coming into BP. Kidd answered that Alaskan North Slope crude oil is in decline, and that BP is looking elsewhere for product, including very heavy sand oil from Canada that is difficult

and costly to process. Doherty followed up by noting that it seems hypocritical that BP is pushing for alternative energy and yet looking so keenly for other sources of oil.

Shaw noted that BP is investing \$8 billion in alternative energies.

Jones asked about the activities of ships waiting to be loaded or unloaded. The reply was that ships are at anchor.

Chairman Cooper asked if a repeal of the MA means an increase in crude oil traffic. Kidd replied that traffic is expected to increase regardless due to growing demand.

Kevin Ranker (Ranker) noted that from his understanding, after speaking with policy analysts involved with the MA issue, there is a direct correlation between a repeal of the MA and the volume of crude oil traffic in the Puget Sound.

Chairman Cooper asked if ships waiting to dock were usually full of crude oil. The reply was that the quantity varies with each ship.

Brett Bishop (Bishop) asked Kidd to verify whether or not BP would have to cut production by 10% if the MA is not repealed. Kidd answered that BP would have to revert to pre-2000 production levels, meaning a decrease of about 10%.

Chairman Cooper thanked Kidd for his information and participation.

Tracking of State Legislation – Department of Ecology Request Legislation

Brown Miller briefed the council on the Department of Ecology (DOE, Ecology, Department) legislative proposal and request legislation (see attached documents titled ‘Department of Ecology Legislative Proposal’ and ‘Department of Ecology Request Legislation Summary’).

Chairman Cooper invited discussion and input.

Moore noted that the new regulations have only recently been distributed and questions such as what those regulations will be and what the risk is for target areas need to be better understood.

Fletcher thought the issue ‘housekeeping’, and that there should be minimal debate because the request legislation seems to be correcting previous wording errors and would clarify authority and power that should already exist.

Moore replied that legislators excluded recreational vessels because they felt other vessels were more important due to potential volume of spills. He also added, in response to Fletcher’s comment, that the legislation is more than ‘housekeeping’ because it would broaden DOE authority to regulate vessels not previously under their control.

Jones added that recreational vessels should be considered in the new regulations, as they are the most likely to have accidental spills.

Chairman Cooper, in response to Jones’s comments, noted that the legislators wanted to address mobile facilities refueling vessels such as ferries at the pier, and in so doing avoiding environmental regulations to which transfers are subject.

Lee Roussel (Roussel) suggested that a useful change in the legislation would be wording to allow DOE to adopt rules requiring notification of community environmental organizations before transferring oil, which would supplement the Department’s resources.

Philip Bannan (Bannan) thought looking at spill data from all oil transfers would be useful.

Chairman Cooper replied that the data can be found on the DOE website*.

*This information can be found on the Department of Ecology's website at: <http://www.ecy.wa.gov/programs/spills/spills.html>. A report titled, 'Oil and Fuel Transfer Over Waters of the State of Washington' is in the right-hand column under 'Hot Topics'. Ecology also publishes an annual report, titled 'VEAT- Vessel Entries and Transits for Washington Waters,' which can be found on the spills publications page at: <http://www.ecy.wa.gov/biblio/spills.html>.

Moore noted that Coast Guard (CG) is working on that data as well, and that the alignment of CG and DOE data is important and an ongoing process.

Chairman Cooper noted that staff is working on answering questions from the first council meeting and that they can provide some help with regard to data compilation. He added that spills in public ports are an important part of that study, and relatively unknown.

Bannan noted that a spill of any size is supposed to be reported.

Doherty wondered if staff could speak with DOE about the distribution of their personnel, in particular on the Olympic Peninsula and Outer Coast.

Elin Storey (Storey), a policy analyst with the Preparedness Section of DOE's Spills Program, provided information on this subject. DOE has four regional offices. They are in Bellevue, Spokane, Yakima, and Lacey. They also have three field offices in Bellingham, Vancouver, and Seattle. When an incident occurs, staff from the nearest office are the first DOE responders. Additional staff from other offices respond when necessary.

Jim Davis (Davis) thought it might be helpful to look beyond Puget Sound at the moratorium on offshore drilling and how it might fit with the council work plan.

Public Comment

Commenter 1: Greg Hanon (Hanon), representing the Western States Petroleum Association, spoke on the DOE proposals and presented the council with a DOE budget summary. He noted that the Spills Program will see a 17% increase in funding in the 2007-09 biennium, but no increase in revenue. He suggested that a fee for motor vehicle transfers could help with the revenue shortfall.

A discussion between Hanon and the Council followed.

Fletcher commented that Spill Program revenue comes exclusively from the barrel tax, noting that many things contribute to spill risk and not many people pay for prevention. She noted that removing refund credits to oil companies for oil leaving Washington would take care of the budget deficit.

Jones commented that motor vehicle transfers are abundant because they are cheaper, and if a fee is charged for such transfers, they will decline dramatically and negate the need for the six full time employees (FTEs) Ecology is requesting. Bannan agreed, citing the loss of the economic benefit of motor vehicle transfers.

Hanon reiterated that revenue is important, and although the solution he presented is not a perfect one, it is a beginning.

Chairman Cooper noted that the council's work on this issue is an important charge and will be considered by the legislature in 2007.

Commenter 2: Tom Copeland, a former Prince William Sound fisherman and active participant in the Prince William Sound Regional Citizen's Advisory Council,

voiced his concern over Ecology's new contingency plan rules and their shortcomings concerning drills. In particular, he would like to see more unannounced drills and stricter consequences for failure of drills. He implored the council to address the need for more drills because he feels no other group will.

Commenter 3: Storey spoke about the drill program. She noted that the Department performed four unannounced drills this year on facilities around the state, and that those tested successfully met DOE standards. It was clarified that Ecology notified every company in the state (30+ companies) that an unannounced drill could occur within the next 30 days. The idea behind the notice is to avoid drilling companies when it would be dangerous or severely economically damaging to do so, and to prevent wasted effort by the Department. Storey also noted Ecology is tested as well.

A discussion between Storey and the Council followed.

Doherty asked how many drills had been performed on the Outer Coast where equipment was actually deployed. Storey replied that DOE has performed none, but that CANUSPAC (Canadian and U.S. Coast Guard) has performed two in the last six years.

Davis asked how many companies cited economic or safety concerns to opt out of drills. Storey replied that the number is minimal. Davis asked if allowing the option of opting out creates an artificial drill situation. Storey replied that safety is the Department's highest priority and not to be compromised.

Joyce asked about the probability that a company will get drilled in any given year.

Storey noted a general shortage of Ecology staff to perform drills, with 35 regulated companies and only six staff. They perform three to four 'no-notice' drills per year. Consequences for failing drills range from revising contingency plans to completely replacing spill management teams, measures that the Department has enforced in the past.

Storey also mentioned that Ecology would still face a budget deficit without the six new FTEs the Department is requesting.

Work Plan Discussion

Staff presented the council with a draft work plan for discussion. Items on the work plan were addressed individually. Items were either approved as they were written, briefly revised and approved, or voted down. If five council members objected to an item, it was set aside for revision or removal. A copy of the original work plan is provided ('Draft Work Plan'), and a copy showing proposed edits and additions ('Revised Draft Work Plan').

It was decided that a committee would be formed to discuss the proposed changes and agree on a final work plan to present to the council at the January 20 meeting.

Public Comment

Commenter 4: Dave Sanders (Sanders), representing the Puget Sound Pilots (PSP), offered the Pilots' services to the council, noting that the group can provide assistance on several issues and inviting the council to contact them anytime.

Chairman Cooper thanked Sanders and noted that the PSP have provided the council with an informative letter regarding marker buoys at Port Angeles. Their help is welcome and appreciated.

Work Plan Discussion

The council moved back to the work plan to discuss items it would like to see added to the work plan. These items are addressed in 'Revised Work Plan'.

Summary and Next Steps

Chairman Cooper noted that the committee's revised work plan should include a 12-month prioritization of items that the council can begin examining in January. The January meeting will also include a discussion of sources of funding. He also mentioned that the council should begin thinking of a scope of work for the consultant who will be hired early in 2006.

Chairman Cooper adjourned the meeting at 4 p.m.